

US EPA RECORDS CENTER REGION 5



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Per VM messagePage 1-2, 8, 21-25

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

IN THE MATTER OF:

Tar Creek Superfund Site
Ottawa County, Oklahoma

Blue Tee Corp.,
Gold Fields Mining Corporation, and
U.S. Department of the Interior

Respondents

CERCLA DOCKET NO. 6-03-01

ADMINISTRATIVE ORDER
ON CONSENT FOR RI/FS FOR OU4

Proceeding under Sections 104, 122(a), and
122(d)(3) of the Comprehensive
Environmental Response, Compensation
and Liability Act, 42 U.S.C. §§ 9604, U.S.
9622(a), and 9622(d)(3)

**ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL INVESTIGATION/FEASIBILITY STUDY
FOR OPERABLE UNIT 4**

I. INTRODUCTION

1. This Administrative Order on Consent ("Order" or "AOC") is entered into voluntarily by the U.S. Environmental Protection Agency ("EPA"), and the Respondents, Blue Tee Corp., Gold Fields Mining Corporation, and the Federal Respondent, U.S. Department of the Interior. (Hereinafter Blue Tee Corp., and Gold Fields Mining Corporation are collectively referred to as "Respondents." Hereinafter references to the "Federal Respondent" mean the U.S. Department of the Interior.) As provided herein, the Respondents shall prepare and perform a Remedial Investigation and Feasibility Study ("RI/FS") for Operable Unit 4 ("OU4") of the Tar Creek Superfund Site located in Ottawa County, Oklahoma (the "Site") except for the Baseline Risk Assessment. EPA will perform the Baseline Risk Assessment, but Respondents shall support EPA by providing site characterization information as provided in this Order including without limitation the Statement of Work ("SOW"). Respondents shall pay EPA for EPA's Baseline Risk Assessment costs as provided in Section XXIII (Special Account for Response Costs). As provided herein, Respondents and the Federal Respondent shall reimburse the EPA for all of EPA's Response Costs except for Past Response Costs. (The terms "Response Costs" and "Past Response Costs" are as defined herein.) Respondents shall make response cost reimbursement payments to EPA as provided in Section XXIII (Special Account for Response Costs). Under the terms of Section XX (Reimbursement of Respondents by the Federal Respondent) of the Order, the Federal Respondent shall make an initial payment (additional payments may be required under the Order) of \$1,380,000 to the Respondents who shall use this

payment, along with their own funds to perform the RI/FS and to reimburse EPA. Except as provided in paragraph 49(a) and (b), neither the Respondents' nor the Federal Respondent's compliance with this Order is contingent upon any other party' or parties' compliance with the Order. As provided in paragraph 12, Respondents shall provide copies of all submissions to the ODEQ, the Quapaw Tribe, and to DOI for their review. The EPA will consider timely comments submitted by the ODEQ, the Quapaw Tribe, and DOI as provided in paragraph 42.

II. JURISDICTION

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9622(a), and 9622(d)(3) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987); further delegated to Regional Administrators by EPA Delegation No. 14-14-C (April 15, 1994); and redelegated by the Regional Administrator to the Director, Superfund Division, by EPA Delegation No. R6-14-14-C (June 8, 2001).

3. Respondents and the Federal Respondent agree to undertake the requirements of this Order. In any action by EPA or the United States to enforce the terms of this Order, Respondents and the Federal Respondent consent to and agree not to contest the authority or jurisdiction of EPA to issue or enforce this Order, and agree not to contest the validity of this Order or its terms. The Respondents' and Federal Respondent's participation in this Order shall not constitute an admission of liability or agreement with EPA's findings or determinations contained in this Order, except as necessary in a proceeding to enforce the terms of this Order.

III. PARTIES BOUND

4. This Order applies to and is binding upon EPA and upon Respondents and the Federal Respondent, their agents, successors, assigns, officers, directors and principals. Respondents and the Federal Respondent are responsible for carrying out all the requirements of this Order as they apply to them respectively. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent to this Order. No change in the ownership or corporate status of Respondents, or of OU4, including any transfer of assets, or in the agency structure or responsibilities of Federal Respondent, will alter Respondents' or Federal Respondent's responsibilities under this Order. Except as provided in paragraph 49(a) and (b), Respondents are jointly and severally liable for carrying out all the requirements of this Order, and compliance or noncompliance by one Respondent with any requirement of this Order shall not excuse or justify noncompliance by the other Respondent(s).

5. The Respondents shall provide a copy of this Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories,

inconsistent with the National Contingency Plan as specified by the RPM in writing, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, OSWER Directive 9355.3-01 (October 1988) (hereinafter the RI/FS Guidance) is a Performance Standard. The other EPA guidance documents cited in this order or in the SOW are also Performance Standards. It is a requirement of this Order for Respondents to meet Performance Standards.

"Quapaw Tribe" or "Tribe" shall mean the Quapaw Tribe of Oklahoma.

"Requirements of this Order" or a similar term means payments that Respondents or Federal Respondent are to make under this Order, work that Respondents are to perform under this Order, scheduled deadlines that Respondents are to meet under this Order including without limitation deadlines in schedules in EPA-approved submissions, performance standards, and any other obligation of Respondents under this Order. Subject to the provisions of Section XXII (Force Majeure), it is a violation of this Order for Respondents or Federal Respondent to fail to complete or meet a requirement of this Order.

"Respondents" means Blue Tee Corp. and Gold Fields Mining Corporation. Blue Tee Corp. operated in Ottawa County through its predecessor company, American Zinc, Lead and Smelting Company ("AZLC") and Gold Fields Mining Corporation operated in Ottawa County through its predecessor company, Tri-State Zinc, Inc. ("TSZI").

"Response Costs" mean all costs, including direct costs, and indirect costs, paid by the EPA related to the RI/FS for OU4 plus accrued Interest on all such costs. Response Costs include without limitation costs paid by EPA in order to oversee, perform or support response actions for the RI/FS. Response Costs include without limitation overhead costs, accounting costs, cleanup costs, enforcement costs, community relations costs and legal costs (including costs incurred by the U.S. Department of Justice (DOJ) on behalf of EPA). Response Costs include costs incurred by the EPA in overseeing Respondents' implementation of the requirements of this Order (i.e., oversight costs). Response Costs include without limitation activities performed by the EPA as part of the RI/FS including, but not limited to, the Baseline Risk Assessment. Response Costs include without limitation costs incurred by the EPA (and DOJ) in obtaining access; however, Response Costs shall not include payment for access to land owned, leased, controlled, or held in trust by the Federal Respondent, the Quapaw Tribe, or individual members of the Quapaw Tribe. Response Costs include without limitation time and travel costs of EPA personnel, contractor costs, interagency agreement costs, cooperative agreement costs, compliance monitoring including the collection and analysis of split samples, inspection of RI/FS activities, site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, costs of performing the Baseline Risk Assessment, and costs of redoing any of Respondents' work. Further, Response Costs do not include the costs of review of submissions by the

submissions will not constitute approval by EPA.

45. In the event of approval by EPA, Respondents shall proceed to take any action required by the submission, as approved or modified by EPA. EPA may approve part of a submission, and notwithstanding any EPA notice of disapproval or approval with modifications regarding other parts of a submission, Respondents shall proceed, at the written direction of EPA, to take any action required by any EPA-approved portion of the submission, to the extent such action is not dependent upon the disapproved portion.

46. Upon receipt of a request for a modification under "(b)" of paragraph 43 or a notice of disapproval under "(c)" of paragraph 43, Respondents may request a meeting to obtain clarification or resolution of the request for modification or the notice of disapproval. Respondents shall within 30 days after the meeting or other longer time as specified by EPA, correct the EPA-identified deficiencies and resubmit the submission for approval.

47. If any final submission submitted by Respondents pursuant to paragraph 46 is not approved by EPA, Respondents shall be in violation of this Order. That is, Respondents are in violation of this Order if EPA disapproves a submission under "(c)" or "(d)" of paragraph 43. However, notwithstanding any other part of this Order, stipulated penalties do not begin to accrue on a submission that is disapproved by EPA under "(c)" of paragraph 43 until the time EPA notifies the Respondents in writing that the submission in question is still deficient after the submission has been resubmitted as described in paragraph 46, unless Respondents fail to resubmit the submission within the time period described in paragraph 46 in which case stipulated penalties begin to run after the 30-day period has expired.

Work

48. Respondents shall perform the work described in this Order including without limitation the SOW (Attachment 1) and including without limitation any EPA-approved submissions. Respondents are required to meet deadlines specified in this Order including the SOW, and Respondents are required to meet deadlines in EPA-approved submissions.



X. REIMBURSEMENT OF RESPONDENTS BY THE FEDERAL RESPONDENT

Except as expressly provided in paragraph 49(a) and (b) below, this section of the Order pertains only to the funding agreement established between Federal Respondent and Respondents, and, except as expressly provided in other sections of the Order, the terms of this section do not affect the other requirements of the Order, including without limitation payment requirements, set forth in the other sections of the Order.

49. The United States, on behalf of the Federal Respondent, agrees to pay to Respondents an amount equal to 50 percent of all Covered Response Costs. Payment under this

paragraph shall be made as follows:

a. Within 90 days after the effective date of this Order, the United States, on behalf of the Federal Respondent, shall pay to Respondents the sum of \$1,380,000. If Respondents do not receive the \$1,380,000 payment within 90 days of the Effective Date as provided in this paragraph, deadlines for Respondents' submissions and payments established in the Order will be extended by a number of days equal to the number of days from 90 days of the Effective Date until the date of payment. For example, if the \$1,380,000 payment is not received by Respondents until 100 days after the Effective Date, the deadlines for Respondents submissions and payments would be extended by 10 days. If Respondents do not receive the \$1,380,000 payment within 90 days of the Effective Date, EPA may rescind this Order at any time.

b. When Covered Response Costs reach 75% of \$2,760,000 (*i.e.*, \$2,070,000), Respondents shall notify the Federal Respondent of that fact in writing. Such notice shall include a projection of the estimated additional Covered Response Costs needed to complete the work, with a full explanation of the assumptions and methods used by Respondents in deriving the projection. Federal Respondent may request additional information regarding the projection in writing within 30 days of its actual receipt of the notice. Respondents agree to provide a response to such request, in writing, within 10 days of its actual receipt of a written request for additional information from Federal Respondent. Within 20 days of actual receipt of the additional information requested, Federal Respondent will notify Respondents which projected additional Covered Response Costs it accepts and which it rejects. As to those projected additional Covered Response Costs it accepts, Federal Respondent will pay its allocated share (*i.e.*, 50%) of the projected additional Covered Response Costs within 90 days of Federal Respondent's notification of its acceptance of those additional Covered Response Costs. The payment made by Federal Respondent or on its behalf will be made to the trust described in subparagraph (c) of this paragraph in a manner mutually agreed upon by Respondents and Federal Respondent. As to those projected additional Covered Response Costs rejected by Federal Respondent, Respondents may institute the dispute resolution process set forth below in subparagraph (e) of this paragraph with regard to the rejected projected additional Covered Response Costs. However, if Respondents do not receive the full amount of the Federal Respondent's estimated additional Covered Response Costs within 90 days of Respondents' original notice, deadlines for Respondents' submissions and payments established in the Order will be extended by the number of days equal to the delay of payment, except that Respondents must continue the ordered Work until all funds in the original account established by paragraph (c) below are exhausted. After the 90-day period, Federal Respondent is also subject to the interest provisions of paragraph (d) below. If it becomes known to Respondents that the cost of completing the work will exceed the projected additional Covered Response Costs referenced above in this subparagraph (subparagraph (b) of paragraph 49), Respondents may again notify Federal Respondent in writing of Respondents' revised projection as of the time that 75 percent of the previous projection of additional Covered Response Costs have been incurred by Respondents. All provisions above referenced in this subparagraph (subparagraph (b) of

paragraph 49) with regard to additional Covered Response Costs are applicable to future additional Covered Response Cost requests. However, in no case will Federal Respondent be required to make additional payments more than twice per year.

c. Payments under this paragraph shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) into an account to be established by the Respondents in accordance with current electronic funds transfer procedures which will be provided to Respondents by Federal Respondent. All moneys paid by the United States to Respondents will be held in a segregated account and will be held in trust for the sole purpose of funding Covered Response Costs. Neither Respondents nor anyone else may use the money in this account for any purpose other than the payment of Covered Response Costs. Respondents and Federal Respondent agree that Respondents may pay bills or invoices pertaining to the Work directly from this account, and may use funds from this account to make payments to the Tar Creek OU4 Special Account for RI/FS pursuant to Section XXIII. The funds in this account are held for the benefit of EPA, Federal Respondent, Blue Tee Corp. and Gold Fields Mining Corporation solely for the purpose of funding Covered Response Costs. Respondents will prepare quarterly reports in March, June, September and December of each year stating what funds have been spent from this account, documenting that the funds were spent consistent with this subparagraph, and including a signed certification stating that the funds spent from this account were spent in compliance with this subparagraph. These quarterly reports shall be sent to Mr. John Dalgam, Environmental Protection Specialist, at Bureau of Indian Affairs Miami Field Office, P.O. Box 391, Miami, OK 74256.

d. In the event that a payment required under subparagraphs (a) or (b) is not made when due, interest on the unpaid balance shall be paid at the rate established pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing either (1) for the payment under subparagraph (a), on effective date of this Order; or (2) for a payment under subparagraph (b), on the 91st day after the earlier of (i) acceptance of future costs by the Federal Respondent, or (ii) the resolution of disputed costs under subparagraph (e), and accruing through the date of the payment.

e. If the Federal Respondent disputes any cost claimed by Respondents in a claim under subparagraph (b) of this paragraph, it will notify the Respondents in writing within 90 days of receipt by the Federal Respondent of the documentation described in subparagraph (f) below. In the written notification of dispute, the Federal Respondent shall state with reasonable specificity the grounds for its dispute, the matter in dispute, and provide any other information that may be useful to resolve the dispute. The Respondents and Federal Respondent agree to work in good faith to resolve all disputed costs within a reasonable time after the Respondents receive the written notification of dispute from the Federal Respondent. To the extent that any costs are successfully disputed, such costs with interest shall be returned to the segregated account established by Respondents under subparagraph 49(c) of this Section.

f. As documentation of the Covered Response Costs incurred, the

Respondents agree to provide to Mr. John Dalgarn, Environmental Protection Specialist, at Bureau of Indian Affairs Miami Field Office, P.O. Box 391, Miami, OK 74256, the following:

i. Contemporaneously with their creation or original transmission, copies of all reports, communications, drafts, plans, cost estimates, invoices and other documentation that the Respondents receive from, requests of or otherwise causes to be prepared by any contractor hired to assist the Respondents to perform the AOC Work, and copies of all written communications to EPA from the Respondents or any representative thereof with regard to the Respondents' performance of the AOC work; and

ii. If the Respondents seek payments under subparagraph (b), the Respondents shall provide to the Federal Respondent:

A. A certification that all monies previously paid by the United States pursuant to subparagraphs (a) and (b) were used for payment of, or reimbursement for, Covered Response Costs; and

B. A chronological summary of all Covered Response Costs that the Respondents claim to have incurred, copies of all supporting invoices arranged in chronological order, and records of payment of each such invoice, for all Covered Response Costs, whether reimbursed under subparagraphs (a) or (b).

iii. Each time that the Respondents send any documentation, requests for payment and/or any other materials to the Federal Respondent under this paragraph, the Respondents shall send a copy of the cover letter (without enclosures) to the persons listed in Paragraph 72(c):

g. Respondents and Federal Respondent expressly acknowledge that this Order does not establish, either actually or presumptively, the appropriate final allocation between the Respondents and Federal Respondent of any costs at the Site. Respondents and Federal Respondent reserve their rights to seek to pay a lesser percentage than the percentage under this Order in any Final Allocation. This Order shall not be offered or used as precedent or evidence of what the appropriate final allocation should be.

h. If either Respondents or Federal Respondents seek contribution from each other for costs relating to the Site, other than Covered Response Costs, then either party may reopen the allocation in this Agreement and seek to have the Covered Response Costs borne by it applied as a credit towards its allocated share of the sum of (1) the costs other than Covered Response Costs for which contribution is sought, and (2) Covered Response Costs. As used in the previous sentence, "Covered Response Costs borne by it" means for Respondents, the amount incurred in compliance with the AOC less the amounts paid to Respondents by the United States under this paragraph, or, for the Federal Respondent, the amounts paid to Respondents under this paragraph.

50. Any payments made by the United States pursuant to this Order are subject to the availability of appropriated funds. Nothing in this Order shall be interpreted as, or shall constitute, a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

XI. BASELINE RISK ASSESSMENT

51. EPA will perform the Baseline Risk Assessment part of the Remedial Investigation (RI), including both a Human Health Baseline Risk Assessment (HHRA) and an Ecological Baseline Risk Assessment (ERA), but Respondents shall support EPA by providing site characterization information within the scope of the RI as provided in the SOW. Respondents shall pay EPA for EPA's Baseline Risk Assessment costs as provided in Section XXIII (Special Account for Response Costs). The major components of the HHRA include contaminant identification, exposure assessment, toxicity assessment, and human health risk characterization. The major components of the ERA include contaminant identification, exposure assessment, toxicity assessment, and ecological risk characterization. In both the HHRA and ERA, EPA will consider Indian practices in calculating risk.

EPA will prepare the draft HHRA and draft ERA utilizing data contained in the Draft Preliminary Site Characterization Report. EPA will provide copies of the draft HHRA, draft ERA, and a copy of a draft EPA memorandum on its risk management decision for OU4 to the Respondents, ODEQ, the Quapaw Tribe, and DOI for review and comment. EPA will respond in writing to any timely⁵ comments provided by the Respondents, ODEQ, Quapaw Tribe, and DOI, and will meet with these parties to discuss its response to timely comments.

52. After considering any significant comments received, EPA will prepare a final HHRA, a final ERA, and a final EPA memorandum on its risk management decision for OU4. Within 30 days of receipt of EPA's final HHRA, final ERA, and final memorandum, Respondents shall submit a Draft Proposal of Refinement of Preliminary Remedial Action Objectives, as described in the SOW, to EPA. The final HHRA, final ERA, and the final EPA memorandum will be included in the Administrative Record for OU4 remedy selection along with the final RI report.

53. EPA will respond to all significant comments on the HHRA, the ERA and EPA's memorandum on its risk management decision that are received during the formal comment period on the Proposed Plan, in the Responsiveness Summary of the Record of Decision in a manner consistent with 40 CFR § 300.430(f)(3).

⁵ODEQ, Quapaw Tribe, DOI, and Respondents' comments are considered "timely" for the purposes of this paragraph if they are submitted within 30 days from the date of the transmittal letter conveying the drafts.